Slaughter v. Jones Day Doc. 25

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
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MICHAEL N. MILBY, CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AVA SLAUGHTER, Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-05-3455
	§	
JONES DAY, Defendant.	§	

PLAINTIFF'S RULE 59 MOTION FOR NEW TRIAL AND MOTION FOR RECONSIDERATION

Pursuant to Rule 59 of the Federal Rules of Civil Procedure, Plaintiff Ava Slaughter moves for a new trial and asks that the Court reconsider its order granting summary judgment. In support, Plaintiff states as follows:

1.

The Defendant Offered No Excuse in its Motion for its Decision to Demote Plaintiff From Her Job as GIS Manager, Thereby Forcing Her to Compete for a Job She Was Already Holding

In its motion for summary judgment, Jones Day feigned that Slaughter was not demoted, and that it legitimately chose Del Riesgo over Slaughter. Defendant's motion, p. 9 and following. In its Order, the Court determined that Slaughter was indeed demoted, but that Slaughter failed to show that Jones Day's preference for Del Riesgo over Slaughter was pretextual. Docket Entry No. 22 at p. 11.

The error in this approach is that it focuses on the wrong act. Jones Day demoted Slaughter when it posted her incumbent GIS Manager position and made her compete for her own job. The decision to demote Slaughter, however, was made in February 2003, eight months before the position was posted. Crucially, Jones Day's motion for summary judgment offered no explanation for its demotion decision, meaning that

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Slaughter's *prima facie* case of discrimination stands unrebutted. Not only does the record contain no explanation for why Slaughter was suddenly forced to compete for her own job, to the extent Defendant's Motion implies any excuse – that Slaughter was never really the GIS Manager – the record evidence makes clear that it is pretextual. The record is replete with examples that Ava Slaughter was, for years, the GIS Manager of the Houston office. See, Pl. Exs. 1, 3, 5 ("Natalie also wanted to announce we have a new IS manager in the Houston Office. **Her name is Ava Slaughter**. She is from the previous firms and is planning to join the OPS calls." ISS Teleconference Notes, January 23, 2001, Item Six. [emphasis supplied])

Jones Day offered no explanation for its demotion decision. Instead, it successfully diverted the Court's attention from its lack of justification by focusing on the irrelevant question of comparative qualifications. The case does not hinge upon Del Riesgo and Slaughter's respective qualifications. It has only to do with why Slaughter was made to compete for her own job. The central question is not why Del Riesgo was chosen after Slaughter was demoted; it is why Slaughter was demoted in the first place. That is the decision that Jones Day never explains.[1]

At no point in the motion, the evidence, or the record is any explanation given why Slaughter was demoted. Instead, the evidence shows that there is a genuine issue of material fact on the question of demotion. Docket Entry 22 at page 9 ("The court therefore concludes that a material dispute exists as to whether plaintiff was demoted.").

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[1] Of course, it cannot be that Jones Day decided to make Slaughter compete for her job because of Del Riesgo's superior qualifications; that supposed assessment occurred only **after** Jones Day had already made the decision to demote Slaughter.

This is the focus of the case, not comparisons between Slaughter and Del Riesgo. As Jones Day fails to offer a legitimate business reason for the demotion, the summary judgment should have been denied.

2.

Rule 59 Motion for New Trial and for Reconsideration

Ms. Slaughter moves for a new trial pursuant to Rule 59 on the basis of clear error. "A motion to reconsider an order granting summary judgment is appropriate when the court is presented with newly-discovered evidence, when the court committed clear error, when there is an intervening change in controlling law, or when other highly unusual circumstances exist." *Robinson v. Rubin*, 77 F. Supp.2d 784, 794 (S.D. Tex. 1999). Respectfully, Ms. Slaughter submits that the court committed clear error based upon the arguments of Jones Day.

The standards for reconsideration are the same in that it is appropriate when the court has committed clear error. In this case, the court committed clear error by confusing the selection of Ms. Del Riesgo with the preceding decision, which was the discriminatory act, of forcing Slaughter to compete for her own job.

Even if Del Riesgo herself was qualified for the job, it does not foreclose a remedy for the discriminatory decision to take Ms. Slaughter's job away from her. *Pratt v. City of Houston*, 247 F.3d 601 (5th Cir. 2001). The real issue in this case is that Jones Day has failed to provide a justification for demoting Ms. Slaughter, which this court identifies as being a genuine issue of material fact.

Respectfully, Slaughter submits that the court erred by confusing the excuse for why Jones Day preferred Del Riesgo in the selection process with the real question of why Slaughter was even put in the position of having to compete for her own job against several white employees.

3.

The February 2003 Email Proves Mendacity When Compared to Sworn Interrogatory Answers and Deposition Testimony

Mr. Richardson decided in February 2003 to demote Slaughter. See, Pl. Ex. 5 and Pl. Ex. 6 (Deposition Excerpts). Yet, Jones Day then pretends that the decision is made in September 2003 and swears to that fact in interrogatory answers.

The timing of the decision to demote Slaughter is critical and is a material issue in this case. As Slaughter is entitled to reasonable inferences from the willingness of Jones Day to prevaricate in sworn testimony, it is clear error to grant the summary judgment.

Jones Day continues this mendacity by arguing that Del Riesgo was better qualified than Slaughter. Given that the decision was made in February 2003, Del Riesgo's qualifications are not an issue as she did not apply for the position until September 2003.

The failure of Mr. Richardson to respond or even consider Ms. White's email presents a genuine issue of material fact on the credibility of Jones Day's employment actions. Jones Day decided to take her out of that job and apparently justifies the action by saying that some future applicant (who had not yet applied) was more qualified.

Of course, Jones Day provides no evidence whatsoever of the reason to remove Ms. Slaughter from the GIS Manager position and open it up to competition. This unexplained decision stands unexplained in the summary judgment record, although the discriminatory intent is evidenced via the prevarication of Ms. Slaughter's boss, Mr.

Richardson. Mr. Richardson intentionally misled the Court by testifying that the decision to demote Ms. Slaughter was made in September 2003 when it actually was made in February 2003. Pl. Ex. 5, 6, and Ex. 12.

The chronology in this case is important because the majority of the "criticisms" of Ms. Slaughter's performance occurred after the secret demotion decision was made in February 2003. The subjective complaints regarding her performance come after Ms. White suggested that Slaughter be given the opportunity to succeed in the position. This suggestion was completely ignored by Mr. Richardson while he built a case to justify his earlier decision.

Legally, an "objective" evaluation done after a subjective decision has been made constitutes evidence of discrimination. *Tolan v. Levi Strauss & Co.*, 867 F.2d 467, 469-70 (8th Cir. 1989) (decision to terminate Tolan was made prior to conducting the supposedly objective performance evaluation; thus, "the jury could have viewed the [objective evaluation] process as a sham."); *see also Bethea v. Levi Strauss &* Co., 827 F.2d 355 (8th Cir. 1987). The sham actions of Jones Day are clear in the record and supported by the evidence.

Such actions are clearly intended to discriminate against Ms. Slaughter as the only black individual in the position. Ms. Slaughter, while performing the duties of a manager and clearly in the position of manager, is not given the same support as other managers.

4.

This Is Not A Simple Upgrade: Elliot Does Not Apply

The authority cited by the court and Defendant, *Elliot v. Group Medical & Surgical Serv.*, 714 FD.2d 556, 557 (5th Cir. 1983), is inapplicable to the facts of this case.

This is not a situation where the employee is criticizing the employer for simply upgrading the individual performing a function. *Elliot* stands for the proposition that Courts will not interfere with legitimate business justifications when an employer has decided that it will replace an existing person with one more qualified.

The facts of this case differ. Here, Jones Day made Slaughter compete for her own job. She had held this job for years and been acknowledged by others in her peer group. Jones Day did not offer a legitimate excuse for demoting Slaughter; it explained only why, after demoting Slaughter but letting her compete for her own job, it chose someone else over her.

Slaughter's position is that she was demoted because of her race. Jones Day offered no explanation for that decision. Without a rebuttal to the plaintiff's prima facie case, the summary judgment should not have been granted. *U.S. Postal Service Bd. Of Govenors v. Aikesn*, 460 U.S. 711 (1983). Without an excuse in the record for that decision, it is a clear error to grant summary judgment in Jones Day's favor.

Conclusion and Prayer

The defendant diverts attention with a discussion of qualifications. What Jones Day did not do was justify the reason the demotion occurred in the first place. Without knowing if any other person would apply for Ms. Slaughter's position, Jones Day demoted her and opened up the position. In a farce, Ms. Slaughter was made to reapply for her position and then told that she was not qualified to fill her job. The reasons given for demotion are: exactly nothing. This does not rebut the plaintiff's *prima facie* case, it means that the summary judgment should be denied. Plaintiff respectfully requests that the court reconsider its summary judgment order and/or grant a new trial.

Respectfully submitted,

By: ______________________________

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record in compliance with Rule 5 of the Federal Rules of Civil Procedure on the 26th day of January, 2007.

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